

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CASE NO. 1:22-CV-00828

FEDERAL TRADE COMMISSION,
STATE OF CALIFORNIA, STATE OF
COLORADO, STATE OF ILLINOIS,
STATE OF INDIANA, STATE OF IOWA,
STATE OF MINNESOTA, STATE OF
NEBRASKA, STATE OF OREGON,
STATE OF TENNESSEE, STATE OF
TEXAS, STATE OF WASHINGTON, and
STATE OF WISCONSIN,

Plaintiffs,

v.

SYNGENTA CROP PROTECTION AG,
SYNGENTA CORPORATION,
SYNGENTA CROP PROTECTION, LLC,
and CORTEVA, INC.,

Defendants.

**DECLARATION OF
BENJAMIN M. MILLER
IN SUPPORT OF
SYNGENTA DEFENDANTS'
RESPONSE IN OPPOSITION TO
PLAINTIFFS' MOTION
TO COMPEL DISCOVERY**

**[TEMPORARY PUBLIC
REDACTED VERSION]**

I, Benjamin M. Miller, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am an active member in good standing of the bars of the District of Columbia and the State of New York. I am a counsel at Davis Polk & Wardwell LLP, counsel to Defendants Syngenta Crop Protection AG, Syngenta Corporation, and Syngenta Crop Protection, LLC (“Syngenta”).

2. I respectfully submit this Declaration in support of Syngenta’s Response in Opposition to Plaintiffs’ Motion to Compel Discovery.

3. Davis Polk & Wardwell LLP worked with an eDiscovery vendor to test Plaintiffs’ proposed search terms against Syngenta’s documents collected in connection

with the Federal Trade Commission's pre-Complaint investigation, for the relevant date ranges of each investigation custodian and central repository. When applied to the above documents, the term [REDACTED] yielded approximately 26,000 documents, the term [REDACTED] yielded approximately 22,000 documents, the term [REDACTED] yielded approximately 14,000 documents, the term [REDACTED] yielded almost 15,000 documents, and Plaintiffs' proposed search string regarding loyalty programs¹ yielded almost 239,000 documents.

4. Attached as Exhibit 1 are true and correct copies of the July 1, 2006 Supply Agreement S-Metolachlor Products between Syngenta Crop Protection, Inc. and E.I. du Pont de Nemours and Company, Inc. and the October 1, 2020 Tenth Amendment to the Supply Agreement S-Metolachlor Products between Syngenta Crop Protection, LLC and Corteva AgriScience, produced to Plaintiffs by Syngenta during the pre-Complaint investigation as Syngenta_FTC_00062308 and Syngenta_FTC_00846511, respectively.

5. Attached as Exhibit 2 are true and correct excerpts from the transcript of Vern Hawkins's February 4, 2022 investigative hearing testimony, produced by Plaintiffs to Syngenta in this case as FTC-PROD-0000026682.

¹ We used the following search string regarding loyalty programs: [REDACTED]

[REDACTED] This is the search string proposed by Plaintiffs in their Motion (*see* Mot., n. 4), plus the term [REDACTED] which was included in prior proposals instead of [REDACTED] (*see* Ex. O). We assume that Plaintiffs intended to use the term [REDACTED] instead of [REDACTED] but solely for testing purposes included both terms here.

6. Attached as Exhibit 3 are true and correct excerpts from the transcript of Charles Flippin's October 29, 2021 investigative hearing testimony, produced by Plaintiffs to Syngenta in this case as FTC-PROD-0000022080.

7. Attached as Exhibit 4 are true and correct excerpts from the transcript of Rex Wichert's December 9, 2021 investigative hearing testimony, produced by Plaintiffs to Syngenta in this case as FTC-PROD-0000024114.

8. Attached as Exhibit 5 is a true and correct copy of guidelines published by the Swiss Federal Data Protection and Information Commissioner concerning "Data processing by the employer."

9. Attached as Exhibit 6 is a true and correct copy of a June 25, 2021 memorandum published by the Swiss Federal Data Protection and Information Commissioner concerning "Swiss Firm Data Processing and Sharing of Information with the U.S. Securities and Exchange Commission."

10. Attached as Exhibit 7 is a true and correct copy of the public redacted version of Magistrate Judge Kimberly A. Swank's September 15, 2021 Order in *Syngenta Crop Protection, LLC v. Atticus, LLC*, No. 5:19-cv-00509-D (E.D.N.C. Sep. 15, 2021) (Doc. 362-3).

11. Attached as Exhibit 8 is a true and correct copy of a June 3, 2015 email from Charles Flippin to Ken Fister and Christian Lippuner regarding [REDACTED] [REDACTED] (CX2045), originally produced to Plaintiffs by Syngenta during the pre-Complaint investigation as Syngenta_FTC_00515654, and a true and correct copy of the attachment to that email (a Syngenta [REDACTED])

[REDACTED] (CX2045-003)), originally produced to Plaintiffs by Syngenta during the pre-Complaint investigation as Syngenta_FTC_00515655.

12. Attached as Exhibit 9 is a true and correct copy of a listing of competitor products to Syngenta's azoxystrobin, mesotrione, and s-metolachlor products, provided to Plaintiffs by Syngenta during the pre-Complaint investigation, and produced by Plaintiffs to Syngenta in this case as FTC-Syngenta-00000144.

13. Attached as Exhibit 10 is a true and correct copy of the Federal Trade Commission's May 26, 2020 subpoena duces tecum issued to Syngenta Crop Protection, LLC (which includes the April 27, 2020 Federal Trade Commission Resolution Authorizing Use of Compulsory Process in Nonpublic Investigation, File No. 191-0031).

14. Attached as Exhibit 11 is a true and correct copy of the May 2020 Syngenta Acuron Yield Advantage presentation, produced to Plaintiffs by Syngenta during the pre-Complaint investigation as Syngenta_FTC_00129730.

15. Attached as Exhibit 12 is a true and correct copy of a Technical Information Bulletin by BASF concerning Status Herbicide, available at https://agriculture.basf.us/content/dam/cxm/agriculture/crop-protection/products/documents/BASF_TechBulletin_Status_Corn_Callisto_Laudis_High_Res.pdf.

16. Attached as Exhibit 13 is a true and correct copy of a reference guide by Corteva concerning Aproach Prima, available at https://www.corteva.us/content/dam/dpagco/corteva/na/us/en/products/files/Aproach_Prima_Corn_Fact_Sheet.pdf.

17. Attached as Exhibit 14 is a true and correct copy of a Technical Bulletin by FMC concerning Authority Assist Herbicide, available at <https://ag.fmc.com/us/sites/default/files/2020-03/Authority%20Assist%20Herbicide%20Soybeans%20Tech%20Sheet.pdf>.

18. Attached as Exhibit 15 is a true and correct copy of Syngenta's organizational chart, dated May 21, 2024.

Executed on July 16, 2024.

/s/ Benjamin M. Miller

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